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106th Congress }
2d Session }

SENATE

{ REPORT
{ 106-423

**MOTOR VEHICLE AND MOTOR VEHICLE
EQUIPMENT DEFECT NOTIFICATION IM-
PROVEMENT ACT**

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 3059



SEPTEMBER 27 (legislative day, SEPTEMBER 22), 2000.—Ordered to be
printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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MOTOR VEHICLE AND MOTOR VEHICLE EQUIPMENT DEFECT NOTIFICATION IMPROVEMENT ACT

SEPTEMBER 27 (legislative day, SEPTEMBER 22), 2000.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 3059]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 3059) “A Bill to amend title 49, United States Code, to require motor vehicle manufacturers and motor vehicle equipment manufacturers to obtain information and maintain records about potential safety defects in their foreign products that may affect the safety of vehicles and equipment in the United States, and for other purposes”, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

BACKGROUND AND NEEDS

The recent events regarding the recall of Bridgestone Firestone (Firestone) Tires due to problems with tread separations has highlighted serious deficiencies with the ability of the Department of Transportation to adequately detect and investigate safety-related defects in motor vehicles and motor vehicle equipment. In response to the deficiencies highlighted by this incident, the Committee seeks to improve and strengthen the Secretary’s ability to detect and investigate defects.

On February 7, 2000, a Houston television station (KHOU) aired an exclusive report describing fatal motor vehicle accidents involving tread separations from certain Firestone tires. Prompted by evidence linking four deaths to the tires at issue, on May 2, the National Highway Traffic Safety Administration (NHTSA) commenced an investigation of the Firestone ATX, ATXII, and Wilderness AT

tires manufactured by Firestone and used primarily as original equipment on Ford Explorers.

On August 9, after meetings with NHTSA and Ford, Firestone announced the recall of 14.4 million of the tires under investigation. The recall included all Firestone ATX and ATXII tires of the P235/75R15 size manufactured since 1991, and all Wilderness AT tires of the same size manufactured by Firestone at its plant in Decatur, Illinois. At the time of the August 9 recall announcement, Firestone estimated that 6.5 million of these tires were still in service.

According to NHTSA, most of the injuries and fatalities caused by Firestone tire failures have occurred in warm-weather climates, such as Texas (88 injuries and 29 fatalities), Arizona (22 injuries and 6 fatalities), Louisiana (7 injuries), Nevada (5 injuries and 1 fatality), Georgia (3 injuries and 1 fatality), and Tennessee (1 injury and 1 fatality).

During a September 12, 2000, hearing held by this Committee regarding the tire recall, members of the Committee questioned NHTSA and manufacturers regarding the ongoing recall and potential reforms to prevent the recurrence of a similar safety-related situation. The Committee further discussed NHTSA's preparedness for handling information that contains early-warning signs of safety-related defects of motor vehicles in the field. The witnesses and members of the Committee expressed concern about the effectiveness and efficiency of NHTSA's process of gathering and analyzing data pertaining to vehicle defects, initiating investigations, and issuing recalls. Finally, the Committee discussed NHTSA's failure to update its safety standards, specifically the Federal Motor Vehicle Safety Standards (FMVSS) for tires.

The circumstances surrounding the Ford and Firestone recall demonstrate several flaws in the current law. For example, NHTSA is not notified of recalls or safety-related actions taken in foreign markets that involve products sold in the United States. Ford replaced Firestone tires in 16 foreign countries beginning in August, 1999, but no notice was given, or required to be given, to NHTSA. If a similar action had taken place in the United States, the companies involved would have been required to report such actions to NHTSA under 49 U.S.C. 30166(f).

The Committee also heard testimony that, under the current system, NHTSA does not require manufacturers to report information relevant to defects that may indicate a safety problem with vehicles. For example, NHTSA does not collect claims data that may serve as an early indicator of a problem. As early as 1996, personal injury and property damage claims and lawsuits involving the recalled Firestone tires began to increase significantly and should have served notice that Firestone had a problem with the tires in question. A June 24, 1998, report, which was provided to the Committee by Firestone, outlined 1997 claims demonstrating that the number of warranty claims on ATXII tires had jumped to 279 in 1997 from 42 in 1995, more than a six-fold increase.

During the hearing, the witnesses were questioned by members of the Committee concerning changes to the Federal Motor Vehicle Safety Act that would help NHTSA detect defects in a timely manner and respond effectively. Jacques Nasser, President and Chief Executive Officer of Ford, agreed to several reforms including re-

quiring manufacturers to notify NHTSA of recalls in foreign countries involving motor vehicles and motor vehicle equipment sold and used in the United States; extension of the 5-year-record retention period; lengthening the statute of limitations period on reporting defects and recalls, and the need to require manufacturers to report lawsuits in which they are a defendant.

The witnesses were also asked about increased civil and criminal penalties. Under current law, the maximum civil penalty for a related series of violations is merely \$980,000 and no criminal penalties exist. The Secretary of the Department of Transportation, the Administrator of NHTSA, Jacques Nasser, and consumer groups such as Public Citizen and the Center for Auto Safety, all agree that civil penalties should be increased and that criminal penalties should be imposed in cases of particularly egregious acts.

Civil and criminal penalties are not uncommon for safety-related Federal statutes. The Consumer Product Safety Act (15 U.S.C. 2070) provides criminal penalties for a variety of violations of the Act including failing to manufacture a product in conformity with the Consumer Product Safety Commission standards. The Water Pollution Prevention and Control Act (33 U.S.C. 1319) provides criminal penalties for knowingly placing another person in imminent danger of death or serious bodily injury. Both a civil and a criminal penalty of imprisonment for a period of not more than 15 years is included as well. See also 29 U.S.C. 666 (Occupational Safety and Health Act) and 15 U.S.C. 1264 (Federal Hazardous Substances Act).

Also contained within analogous agency statutes are maximum civil penalties with added discretionary authority granted to the Secretary to evaluate whether a violation of the statute is so egregious as to require a larger penalty. For example, pursuant to section 7413 of the Clean Air Act, the Administrator for the Environmental Protection Agency (EPA) may issue an administrative order for any person assessing a civil administrative penalty of up to \$25,000 per day of violation, not to exceed \$200,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty is appropriate. See also 42 U.S.C. 7524.

LEGISLATIVE HISTORY

In the wake of the hearing, S. 3059 was introduced on September 15, 2000, by Chairman McCain, Senators Gorton and Specter. The Committee addressed S. 3059 as part of its September 20, 2000, executive session. During the session, Chairman McCain and Senator Hollings offered a substitute amendment, which was approved unanimously by voice vote.

ESTIMATED COSTS

In accordance with paragraph 11(a)(3) of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it is necessary to dispense with the requirements of subsection (a)(1) of that paragraph in order to expedite the business of the Senate.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The legislation would apply to: (1) manufacturers of motor vehicles or motor vehicle equipment that are incorporated within or with their principal place of business in the United States and/or persons with their principal place of business in a foreign country, including their direct or indirect domestic and foreign subsidiaries and affiliates, any of which export vehicles or equipment to the United States. Also includes a person with its principal place of business in a foreign country, including its direct or indirect domestic and foreign subsidiaries and affiliates, any of which manufacturers or assembles vehicles or equipment in the United States; (2) dealers and distributors of manufacturers of motor vehicles or motor vehicle equipment within or outside of the United States; (3) insurers of motor vehicles or motor vehicle equipment of a “manufacturer” as defined above; and (4) persons who operate motor vehicles as school buses or who lease or operate commercial passenger vehicles for the purpose of compensation.

ECONOMIC IMPACT

This legislation would affect the nation’s economy to the extent that it requires, for specific kinds of information, persons covered under the Act to collect, retain, and report safety-related information regarding motor vehicles or motor vehicle equipment. Additional safety-related information may be required by the Secretary of Transportation as a result of his or her authorized rulemaking authority, the economic impact of which cannot be defined until the rulemaking concludes. Furthermore, this legislation includes authorization to the Secretary to halt the operation of school buses or commercial passenger vehicles used for compensation should the Secretary identify the existence of an imminent hazard to passenger safety. The economic impact of this authorization would be minimal.

PRIVACY AND PAPERWORK

The impact on the personal privacy of the persons covered by this legislation is difficult to define prior to the completion of the Secretary of Transportation’s rulemaking proceedings authorized under the Act. The outcome of these rulemaking proceedings will also determine whether burdensome paperwork requirements will be necessary.

SUMMARY OF MAJOR PROVISIONS

- Enhances international cooperation with respect to motor vehicle safety and extends manufacturer notification requirements to include overseas actions involving equipment and vehicles sold in the United States.
- Directs the Secretary to collect additional information from manufacturers. Specifically, it would mandate that the Secretary

require manufacturers to collect and report information related to motor vehicle accidents or incidents, claims data, warranty adjustment data, and other safety-related information. The method, manner and extent of the collection of this data would be determined through rulemaking by the Secretary.

- Increases the Motor Vehicle Safety Act’s civil penalties from \$1,000 to \$5,000 for each violation and the maximum penalty from \$800,000 to \$15,000,000, with the ability to assess larger civil penalties for willful and intentional acts.

- Establishes criminal penalties for knowingly violating provisions of the Motor Vehicle Safety Act, which relate to compliance with Federal Motor Vehicle Safety Standards (FMVSS) and notification of defects where the violation results in a death or substantial injury. Specifically, the bill would allow criminal penalties when a manufacturer knowingly places into the stream of commerce a vehicle that fails to meet a FMVSS or if the manufacturer becomes aware of a defect and fails to report and a death or injury results. The bill would allow for imprisonment of up to 5 years when the violation results in serious bodily injury, and 15 years for violations causing death.

- Requires NHTSA to upgrade the tire-safety standard for the first time in 30 years.

- Increases the time period during which manufacturers of motor vehicle equipment and tires are required to remedy safety-related defects without charge.

- Requires NHTSA to improve sidewall markings on tires to help consumers understand load limits and appropriate tire inflation levels.

- Allows the Secretary to halt the operation of school buses or commercial passenger vehicles if the Secretary determines that continued operation of the vehicle with the defect presents an imminent hazard to passengers.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 of the bill identifies the Act as the “Motor Vehicle and Motor Vehicle Equipment Defect Notification Improvement Act.”

Section 2. Improved international cooperation concerning safety-related defects

Section 2 of the bill seeks to enhance the National Highway Traffic Safety Administration’s ability to cooperate with similar safety agencies in foreign countries. The provision adds section 30106 to chapter 301 of title 49, United States Code.

Section 30106(a) of title 49, United States Code, would permit the Secretary to cooperate with foreign transportation authorities to “enhance motor vehicle and traffic safety by exchanging information with those authorities” concerning safety defects and non-compliance with safety standards.

Section 30106(b) of title 49, United States Code, would authorize the Secretary to disclose confidential commercial information to foreign governmental safety agencies if certain conditions are met. The Secretary must determine that the disclosure would be “in the interest of improved motor vehicle safety” and the foreign govern-

mental agency must indicate in writing that it has the authority to protect from public disclosure “confidential commercial information” and then pledge to keep the information confidential. That foreign governmental agency may make the information public if it obtains written permission from the entity to whom the information relates or NHTSA indicates in writing that the information has ceased to qualify as confidential commercial information under the law of the United States.

Section 30106(c) of title 49, United States Code, would authorize the Secretary to disclose to similar foreign governmental agencies “nonpublic, pre-decisional documents concerning regulations or other regulatory requirements,” or other “nonpublic information relevant to agency activities.” These disclosures would require the Secretary to obtain the same written statements and commitments by the foreign governmental agency as is demanded by subsection (b).

Section 30106(d) of title 49, United States Code, provides assurance that the simple transmittal of information as authorized by this section does not require that the information be disclosed to the public under section 552 of title 5, United States Code, the Freedom of Information Act (FOIA).

Section 3. International agreement for recalls of motor vehicles or motor vehicle parts

Section 3(a) of the bill would authorize and request the President to initiate negotiations, within 60 days of the enactment of this Act, for an international agreement governing the recall by manufacturers of motor vehicles or motor vehicle equipment with safety-related defects. This provision prohibits any such agreement from entering into force in the United States without ratification by the United States Senate.

Section 3(b) of the bill indicates that the purpose of the international agreement would be to foster “global transparency” with regard to recalls of motor vehicles or motor vehicle equipment to promote “consumer safety and to enhance consumer confidence.”

Section 3(c) of the bill identifies the provisions that should be incorporated into a negotiated agreement. Those provisions would encourage nations that are signatories to identify a responsible governmental authority for recalls, foster communication, and establish a website in each nation to convey information about recalls.

Section 3(d) of the bill identifies various guidelines for manufacturers that engage in exporting motor vehicles or motor vehicle equipment or the international trade of motor vehicles or manufacturing motor vehicle equipment for inclusion in motor vehicles to be exported. This subsection contains provisions that would require such manufacturers to report relevant information regarding any recall in the country in which it initiates the recall and share recall information with foreign countries that request it.

Section 3(e) of the bill would require the Secretary, acting as competent authority, to coordinate with the Department of State, the Office of the United States Trade Representative, and the NHTSA, to establish an official website on the Internet that would provide information involving recalls of motor vehicles or motor vehicle equipment. This website would operate until an international Internet database can be launched. This subsection also would re-

quire the Secretary to coordinate with United States embassies and consular offices abroad to establish procedures to obtain information regarding recalls.

Section 3(f) of the bill ensures that no FMVSS or any other provision of law would be weakened by the international agreements authorized under this section.

Section 4. Defect and noncompliance notification for oem equipment

Section 4 of the bill would amend section 30118 of title 49, United States Code, by striking “motor vehicle or replacement equipment” in subsections (a), (b), and (c) of section 30118 and inserting “motor vehicle, original equipment, or replacement equipment.”

Section 5. Extension of time for no-charge remedies

Section 5 of the bill would lengthen the period of time for no-charge remedies from 8 years to 10 for automobiles and from 3 years to 5 for tires.

Section 6. Enhanced information reporting

Section 6 of the bill amends section 30118 of title 49, United States Code, by inserting a new subsection (d).

Section 30118(d) of title 49, United States Code, would require the Secretary to initiate a rulemaking, within 120 days of this Act, to establish increased reporting and record retention requirements for manufacturers of motor vehicles or motor vehicle equipment. This subsection mandates that the Secretary require manufacturers to “collect and report to the Secretary periodically, or upon request by the Secretary,” “accidents or incidents, or trends or patterns of accidents or incidents” involving motor vehicles or motor vehicle equipment, “[a]ny 3 or more lawsuits in which the manufacturer is a defendant involving a substantially similar, alleged defect,” all information relating to recalls, and warranty adjustment data received by the manufacturer. This subsection would authorize the Secretary to consider requiring the collection and reporting by manufacturers of any other safety-related information deemed necessary. This subsection would also authorize the Secretary to initiate a rulemaking to establish “enhanced aggregate information reporting requirements” for insurance companies.

Section 7. School buses

Section 7 of the bill would amend section 30125 of title 49, United States Code, to include subsection (d), which authorizes the Secretary to order any person that operates a school bus to halt operation should the Secretary determine that there exists a “defect or noncompliance that presents an imminent hazard to passenger safety if the school bus continues operation before the defect or noncompliance is remedied.”

Section 8. Commercial passenger vehicles

Section 8 of the bill would add a new section to chapter 301 of title 49, United States Code.

Section 30128 of title 49, United States Code, would authorize the Secretary to order “any person that operates a motor vehicle used to transport passengers for compensation to suspend oper-

ation” should the Secretary determine that there exists a “defect or noncompliance that presents an imminent hazard to passenger safety if the vehicle continues such operation before the defect or noncompliance is remedied.”

Section 9. Penalties

Section 9(a) of the bill would amend section 30165(a) of title 49, United States Code, to increase the Motor Vehicle Safety chapter’s per-violation civil penalty from \$1,000 to \$5,000 per day and the maximum penalty from \$800,000 to \$15,000,000. This section also would authorize the Secretary to assess larger civil penalties for intentional and willful acts.

Section 9(b) of the bill would add a new section to chapter 301 of title 49, United States Code.

Section 30170(a) of title 49, United States Code, would make it unlawful for a director, officer, or agent of a manufacturer to introduce into interstate commerce a motor vehicle or motor vehicle equipment if that person knew of a defect or noncompliance, the defect or noncompliance “created an imminent or serious danger of death or grievous bodily harm,” and the defect or noncompliance caused death or grievous bodily harm.

Section 30170(b) of title 49, United States Code, would establish maximum penalties of a fine of \$10,000 and 5 years imprisonment for causing grievous bodily harm and a fine of \$50,000 and 15 years in prison for causing death.

Section 30170(c) of title 49, United States Code, would authorize the United States Attorney to initiate an action or grand jury proceedings for the violation of subsection (a).

Section 10. Records and reports

Section 10(a) of the bill would amend section 30166(e) of title 49, United States Code.

Section 30166(e) of title 49, United States Code, would authorize the Secretary to initiate a rulemaking to require a manufacturer of a motor vehicle or motor vehicle equipment to retain records, and a manufacturer, distributor, or dealer to make reports, so that the Secretary may determine whether the manufacturer, distributor, or dealer is complying with chapter 301 of title 49, United States Code.

Section 10(b) of the bill would amend section 30166(a) of title 49, United States Code.

Section 30166(a) of title 49, United States Code, would provide that, for the purposes of section 30166 the following definitions, rather than those in section 30102 of title 49, United States Code, apply:

- (1) “Motor Vehicle Accident” is defined as an occurrence associated with the maintenance or operation of a motor vehicle equipment resulting in personal injury, death, or property damage.
- (2) “Dealer” means a seller or distributor of new motor vehicles or equipment within or outside the United States to purchasers who purchase for reasons other than resale.
- (3) “Distributor” means a person primarily selling and distributing motor vehicles or equipment within or outside the United States for resale.

(4) “Manufacturer” means a person (i) manufacturing or assembling motor vehicles or equipment, or (ii) importing vehicles or equipment for resale. The definition includes a person incorporated within or with its principal place of business in the United States and/or a person with its principal place of business in a foreign country, including its direct or indirect domestic and foreign subsidiaries and affiliates, any of which export vehicles or equipment to the United States. It also includes a person with its principal place of business in a foreign country, including its direct or indirect domestic and foreign subsidiaries and affiliates, any of which manufactures or assembles vehicles or equipment in the United States.

(5) “Owner” means an owner within or outside the United States.

(6) “Purchaser” means a purchaser within or outside the United States.

(7) “Person” means any manufacturer, distributor, or dealer and any other person within the United States that may have information related to chapter 301 of title 49, United States Code.

Section 10(c) of the bill would make the amendments made by this section effective 180 days after enactment of the Act.

Section 11. Increase in odometer penalties

Section 11(a) of the bill would amend section 32709(a)(1) of title 49, United States Code, to increase the civil penalty for violation of chapter 301 of title 49, United States Code, from \$2,000 to \$5,000 and the maximum civil penalty from \$100,000 to 1,000,000.

Section 11(b) of the bill would amend section 32710(a) of title 49, United States Code, to increase the maximum private action damage award for violations of chapter 301 of title 49, United States Code, from \$1,500 to \$10,000.

Section 12. Revised tire safety standards

Section 12 of the bill would authorize the Secretary within 30 days of the enactment of the Act to initiate a rulemaking proceeding to review and revise the FMVSS for pneumatic tires prescribed under chapter 301 of title 49, United States Code, and to complete the rulemaking no later than June 1, 2001.

Section 13. Improved tire sidewall markings

Section 13 of the bill would authorize the Secretary within 30 days of the enactment of the Act to initiate a rulemaking proceeding to improve the labeling of tires required by section 30123 of title 49, United States Code, to facilitate improved public understanding of load limits and appropriate tire inflation levels.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49. TRANSPORTATION

SUBTITLE VI. MOTOR VEHICLE AND DRIVER PROGRAMS

PART A. GENERAL

CHAPTER 301

[§ 30104. Authorization of appropriations]

[There is authorized to be appropriated to the Secretary \$98,313,500 for the National Highway Traffic Safety Administration to carry out this part in each fiscal year beginning in fiscal year 1999 and ending in fiscal year 2001.**]**

§ 30104. Authorization of appropriations

There are authorized to be appropriated to the Secretary of Transportation, out of the Highway Account of the Highway Trust fund, \$115,954,000 for the National Highway Traffic Safety Administration to carry out this chapter in fiscal year 2001.

* * * * *

§ 30106. International cooperation

(a) *IN GENERAL.*—The Secretary of Transportation may cooperate with the transportation authorities of foreign countries to enhance motor vehicle and traffic safety by exchanging information with those authorities related to motor vehicle and motor vehicle equipment safety defects, and noncompliance with motor vehicle safety and motor vehicle equipment standards and enforcement of regulations.

(b) *CONFIDENTIAL INFORMATION.*—The Secretary may authorize the disclosure of confidential commercial information submitted to the National Highway Traffic Safety Administration, or incorporated in agency-prepared records, to a foreign governmental agency that performs functions similar to those performed by the National Highway Traffic Safety Administration as part of cooperative law enforcement or regulatory enforcement efforts if—

(1) the Secretary determines that disclosure would be in the interest of improved motor vehicle safety; and

(2) the foreign governmental agency provides a statement in writing to the Secretary that—

(A) establishes the foreign governmental agency's authority to protect confidential commercial information from public disclosure; and

(B) commits the foreign governmental agency not to disclose any such information provided to it under this subsection without the written permission of the person to whom the information relates or a written confirmation from the National Highway Traffic Safety Administration that the information has otherwise been made available to the public in the United States.

(c) *NONPUBLIC INFORMATION.*—The Secretary may authorize the disclosure of nonpublic, pre-decisional documents concerning regulations or other regulatory requirements of the National Highway Traffic Safety Administration or other Federal agencies, and other nonpublic information relevant to agency activities, to a foreign governmental agency that performs functions similar to those per-

formed by the National Highway Traffic Safety Administration as part of cooperative law enforcement or regulatory activity if—

(1) the Secretary determines that disclosure is reasonably necessary to facilitate motor vehicle safety related cooperative law enforcement or regulatory activity; and

(2) the foreign governmental agency provides a statement in writing to the Secretary that—

(A) establishes the foreign governmental agency's authority to protect the document or information from public disclosure; and

(B) commits the foreign governmental agency not to disclose any document or information provided to it under this subsection without a written confirmation from the National Highway Traffic Safety Administration that it has no objection to disclosure of the document or that the information has otherwise been made available to the public in the United States.

(d) LIMIT ON DISCLOSURE.—Notwithstanding any other provision of law, a document or information disclosed under subsection (b) or (c) to a foreign governmental agency is not required to be disclosed to the public under section 552 of title 5, United States Code, or any other provision of law, unless the information has otherwise been made available to the public in the United States.

* * * * *

§ 30118. Notification of defects and noncompliance

(a) NOTIFICATION BY SECRETARY.—The Secretary of Transportation shall notify the manufacturer of a [motor vehicle or replacement equipment] *motor vehicle, original equipment, or replacement equipment* immediately after making an initial decision (through testing, inspection, investigation, or research carried out under this chapter, examining communications under section 30166(f) of this title, or otherwise) that the vehicle or equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter. The notification shall include the information on which the decision is based. The Secretary shall publish a notice of each decision under this subsection in the Federal Register. Subject to section 30167(a) of this title, the notification and information are available to any interested person.

(b) DEFECT AND NONCOMPLIANCE PROCEEDINGS AND ORDERS.—

(1) The Secretary may make a final decision that a [motor vehicle or replacement equipment] *motor vehicle, original equipment, or replacement equipment* contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter only after giving the manufacturer an opportunity to present information, views, and arguments showing that there is no defect or noncompliance or that the defect does not affect motor vehicle safety. Any interested person also shall be given an opportunity to present information, views, and arguments.

(2) If the Secretary decides under paragraph (1) of this subsection that the vehicle or equipment contains the defect or does not comply, the Secretary shall order the manufacturer to—

(A) give notification under section 30119 of this title to the owners, purchasers, and dealers of the vehicle or equipment of the defect or noncompliance; and

(B) remedy the defect or noncompliance under section 30120 of this title.

(c) NOTIFICATION BY MANUFACTURER.—A manufacturer of a [motor vehicle or replacement equipment] *motor vehicle, original equipment, or replacement equipment* shall notify the Secretary by certified mail, and the owners, purchasers, and dealers of the vehicle or equipment as provided in section 30119(d) of this section, if the manufacturer—

(1) learns the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety; or

(2) decides in good faith that the vehicle or equipment does not comply with an applicable motor vehicle safety standard prescribed under this chapter.

(d) ENHANCED REPORTING OF INFORMATION.—

(1) RULEMAKING REQUIRED.—*No later than 120 days after the date of enactment of the Motor Vehicle and Motor Vehicle Equipment Defect Notification Improvement Act, the Secretary of Transportation shall initiate a rulemaking proceeding to establish increased reporting requirements and record retention for manufacturers of motor vehicles and motor vehicle equipment to enhance the Secretary's ability to carry out the provisions of this chapter.*

(2) DEADLINE.—*The Secretary shall issue a final rule under paragraph (1) not later than June 30, 2002.*

(3) DATA COVERED.—

(A) REQUIRED DATA.—*In carrying out this subsection, the Secretary shall require manufacturers to collect and report to the Secretary periodically, or upon request by the Secretary, the following information derived from domestic and foreign sources:*

(i) *Accidents or incidents, or trends or patterns of accidents or incidents, involving motor vehicles, motor vehicle equipment, or motor vehicle equipment components or systems manufactured by that manufacturer that result in fatalities, serious injuries, or fires.*

(ii) *Any 3 or more lawsuits in which the manufacturer is a defendant involving the same, or a substantially similar, alleged defect.*

(iii) *Customer satisfaction campaigns, consumer advisories, recalls, or other activity involving the repair or replacement of motor vehicles or items of motor vehicle equipment.*

(iv) *Warranty or adjustment data received by the manufacturer.*

(B) POTENTIAL DATA.—*In carrying out this subsection, the Secretary shall consider requiring manufacturers to collect and report to the Secretary periodically, or upon request by the Secretary, the following information derived from domestic and foreign sources:*

(i) *Consumer complaints.*

(ii) *Safety-related information relating to actual or potential defects not otherwise collected or reported.*

(iii) *The number or other identifying characteristic for motor vehicle equipment sold by that manufacturer.*

(iv) *Communications between the manufacturer and dealers, or other information made available by the manufacturer to dealers, relating to motor vehicle or motor vehicle equipment safety-related defects or recalls.*

(4) *INSURANCE.—No later than 120 days after the date of enactment of the Motor Vehicle and Motor Vehicle Equipment Defect Notification Improvement Act, the Secretary shall initiate a rulemaking proceeding to establish enhanced aggregate information reporting requirements under this chapter for persons in the business of providing motor vehicle insurance or of adjusting motor vehicle insurance claims. The Secretary shall issue a final rule under this paragraph not later than June 30, 2002.*

(5) *CONFIDENTIALITY.—Nothing in this subsection provides an exception from section 30167(a) for information received by the Secretary under the rulemaking required by this subsection.*

[(d)] (e) **EXEMPTIONS.**—On application of a manufacturer, the Secretary shall exempt the manufacturer from this section if the Secretary decides a defect or noncompliance is inconsequential to motor vehicle safety. The Secretary may take action under this subsection only after notice in the Federal Register and an opportunity for any interested person to present information, views, and arguments.

[(e)] (f) **HEARINGS ABOUT MEETING NOTIFICATION REQUIREMENTS.**—On the motion of the Secretary or on petition of any interested person, the Secretary may conduct a hearing to decide whether the manufacturer has reasonably met the notification requirements under this section. Any interested person may make written and oral presentations of information, views, and arguments on whether the manufacturer has reasonably met the notification requirements. If the Secretary decides that the manufacturer has not reasonably met the notification requirements, the Secretary shall order the manufacturer to take specified action to meet those requirements and may take any other action authorized under this chapter.

* * * * *

§ 30120. Remedies for defects and noncompliance

(a) **WAYS TO REMEDY.**—

(1) Subject to subsections (f) and (g) of this section, when notification of a defect or noncompliance is required under section 30118(b) or (c) of this title, the manufacturer of the defective or noncomplying motor vehicle or replacement equipment shall remedy the defect or noncompliance without charge when the vehicle or equipment is presented for remedy.—Subject to subsections (b) and (c) of this section, the manufacturer shall remedy the defect or noncompliance in any of the following ways the manufacturer chooses:

(A) if a vehicle—

(i) by repairing the vehicle;

(ii) by replacing the vehicle with an identical or reasonably equivalent vehicle; or

(iii) by refunding the purchase price, less a reasonable allowance for depreciation.

(B) if replacement equipment, by repairing the equipment or replacing the equipment with identical or reasonably equivalent equipment.

(2) The Secretary of Transportation may prescribe regulations to allow the manufacturer to impose conditions on the replacement of a motor vehicle or refund of its price.

(b) TIRE REMEDIES.—

(1) A manufacturer of a tire, including an original equipment tire, shall remedy a defective or noncomplying tire if the owner or purchaser presents the tire for remedy not later than 60 days after the later of—

(A) the day the owner or purchaser receives notification under section 30119 of this title; or

(B) if the manufacturer decides to replace the tire, the day the owner or purchaser receives notification that a replacement is available.

(2) If the manufacturer decides to replace the tire and the replacement is not available during the 60-day period, the owner or purchaser must present the tire for remedy during a subsequent 60-day period that begins only after the owner or purchaser receives notification that a replacement will be available during the subsequent period. If tires are available during the subsequent period, only a tire presented for remedy during that period must be remedied.

(c) ADEQUACY OF REPAIRS.—

(1) If a manufacturer decides to repair a defective or noncomplying motor vehicle or replacement equipment and the repair is not done adequately within a reasonable time, the manufacturer shall—

(A) replace the vehicle or equipment without charge with an identical or reasonably equivalent vehicle or equipment; or

(B) for a vehicle, refund the purchase price, less a reasonable allowance for depreciation.

(2) Failure to repair a motor vehicle or replacement equipment adequately not later than 60 days after its presentation is prima facie evidence of failure to repair within a reasonable time. However, the Secretary may extend, by order, the 60-day period if good cause for an extension is shown and the reason is published in the Federal Register before the period ends. Presentation of a vehicle or equipment for repair before the date specified by a manufacturer in a notice under section 30119(a)(5) or 30121(c)(2) of this title is not a presentation under this subsection.

(d) FILING MANUFACTURER'S REMEDY PROGRAM.—A manufacturer shall file with the Secretary a copy of the manufacturer's program under this section for remedying a defect or noncompliance. The Secretary shall make the program available to the public and publish a notice of availability in the Federal Register.

(e) HEARINGS ABOUT MEETING REMEDY REQUIREMENTS.—On the motion of the Secretary or on application by any interested person,

the Secretary may conduct a hearing to decide whether the manufacturer has reasonably met the remedy requirements under this section. Any interested person may make written and oral presentations of information, views, and arguments on whether the manufacturer has reasonably met the remedy requirements. If the Secretary decides a manufacturer has not reasonably met the remedy requirements, the Secretary shall order the manufacturer to take specified action to meet those requirements and may take any other action authorized under this chapter.

(f) FAIR REIMBURSEMENT TO DEALERS.—A manufacturer shall pay fair reimbursement to a dealer providing a remedy without charge under this section.

(g) NONAPPLICATION.—

(1) The requirement that a remedy be provided without charge does not apply if the motor vehicle or replacement equipment was bought by the first purchaser more than **[8 calendar years,]** *10 calendar years*, or the tire, including an original equipment tire, was bought by the first purchaser more than **[3 calendar years,]** *5 calendar years*, before notice is given under section 30118(c) of this title or an order is issued under section 30118(b) of this title, whichever is earlier.—

(2) This section does not apply during any period in which enforcement of an order under section 30118(b) of this title is restrained or the order is set aside in a civil action to which section 30121(d) of this title applies.

(h) EXEMPTIONS.—On application of a manufacturer, the Secretary shall exempt the manufacturer from this section if the Secretary decides a defect or noncompliance is inconsequential to motor vehicle safety. The Secretary may take action under this subsection only after notice in the Federal Register and an opportunity for any interested person to present information, views, and arguments.

(i) LIMITATION ON SALE OR LEASE.—

(1) If notification is required by an order under section 30118(b) of this title or is required under section 30118(c) of this title and the manufacturer has provided to a dealer (including retailers of motor vehicle equipment) notification about a new motor vehicle or new item of replacement equipment in the dealer's possession at the time of notification that contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter, the dealer may sell or lease the motor vehicle or item of replacement equipment only if—

(A) the defect or noncompliance is remedied as required by this section before delivery under the sale or lease; or

(B) when the notification is required by an order under section 30118(b) of this title, enforcement of the order is restrained or the order is set aside in a civil action to which section 30121(d) of this title applies.

(2) This subsection does not prohibit a dealer from offering for sale or lease the vehicle or equipment.

* * * * *

§ 30125. Schoolbuses and schoolbus equipment

(a) DEFINITIONS.—In this section—

(1) “schoolbus” means a passenger motor vehicle designed to carry a driver and more than 10 passengers, that the Secretary of Transportation decides is likely to be used significantly to transport preprimary, primary, and secondary school students to or from school or an event related to school.

(2) “schoolbus equipment” means equipment designed primarily for a schoolbus or manufactured or sold to replace or improve a system, part, or component of a schoolbus or as an accessory or addition to a schoolbus.

(b) STANDARDS.—The Secretary shall prescribe motor vehicle safety standards for schoolbuses and schoolbus equipment manufactured in, or imported into, the United States. Standards shall include minimum performance requirements for—

- (1) emergency exits;
- (2) interior protection for occupants;
- (3) floor strength;
- (4) seating systems;
- (5) crashworthiness of body and frame (including protection against rollover hazards);
- (6) vehicle operating systems;
- (7) windows and windshields; and
- (8) fuel systems.

(c) TEST DRIVING BY MANUFACTURERS.—The Secretary may require by regulation a schoolbus to be test-driven by a manufacturer before introduction in commerce.

(d) *SUSPENSION OF OPERATIONS FOR IMMINENT HAZARD.*—The Secretary may issue an order directing any person that operates a school bus to suspend operation of the school bus as a school bus if the Secretary determines that there is a defect or noncompliance that presents an imminent hazard to passenger safety if the school bus continues operation before the defect or noncompliance is remedied.

* * * * *

§ 30128. Commercial passenger vehicles

The Secretary of Transportation may issue an order directing any person that operates a motor vehicle used to transport passengers for compensation to suspend operation of the vehicle to transport passengers for compensation if the Secretary determines that there is a defect or noncompliance that presents an imminent hazard to passenger safety if the vehicle continues such operation before the defect or noncompliance is remedied.

* * * * *

§ 30165. Civil penalty

[(a) PENALTY.—A person that violates any of sections 30112, 30115, 30117-30122, 30123(d), 30125(c), 30127, 30141-30147, or 30166 of this title or a regulation prescribed under any of those sections is liable to the United States Government for a civil penalty of not more than \$1,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sections. The maximum penalty under this subsection for a related series of violations is \$800,000.]

(a) *IN GENERAL.*—A person that violates any of sections 30112, 30115, 30117 through 30122, 30123(d), 30125(c) or (d), 30126(b), 30127, 30128, 30141 through 30147, or 30166, or a regulation prescribed thereunder, is liable to the United States Government for a civil penalty of not more than \$5,000 per day for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sections. The maximum penalty under this paragraph for a related series of violations is \$15,000,000, except that no such maximum applies in the case of a willful and intentional violation.

(b) *COMPROMISE AND SETOFF.*—

(1) The Secretary of Transportation may compromise the amount of a civil penalty imposed under this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(c) *CONSIDERATIONS.*—In determining the amount of a civil penalty or compromise, the appropriateness of the penalty or compromise to the size of the business of the person charged and the gravity of the violation shall be considered.

(d) *SUBPENAS FOR WITNESSES.*—In a civil action brought under this section, a subpoena for a witness may be served in any judicial district.

§ 30166. Inspections, investigations, and records

[(a) *DEFINITION.*—In this section, “motor vehicle accident” means an occurrence associated with the maintenance or operation of a motor vehicle or motor vehicle equipment resulting in personal injury, death, or property damage.]

(a) *DEFINITIONS.*—Notwithstanding section 30102(a), in this section:

(1) *MOTOR VEHICLE ACCIDENT.*—The term “motor vehicle accident” means an occurrence associated with the maintenance or operation of a motor vehicle or motor vehicle equipment resulting in personal injury, death, or property damage.

(2) *DEALER.*—The term “dealer” means a person selling and distributing new motor vehicles or motor vehicle equipment, inside or outside the United States, primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale.

(3) *DISTRIBUTOR.*—The term “distributor” means a person primarily selling and distributing motor vehicles or motor vehicle equipment, inside or outside the United States, for resale.

(4) *MANUFACTURER.*—The term “manufacturer”—

(A) means a person—

(i) manufacturing or assembling motor vehicles or motor vehicle equipment; or

(ii) importing motor vehicles or motor vehicle equipment for resale; and

(B) includes—

(i) a person incorporated within or with its principal place of business in the United States and its direct and indirect domestic and foreign subsidiaries and affiliates;

(ii) a person with its principal place of business in a foreign country, including its direct or indirect domestic and foreign subsidiaries and affiliates, any of which exports motor vehicles or motor vehicle equipment into the United States; and

(iii) a person with its principal place of business in a foreign country, including its direct or indirect domestic and foreign subsidiaries and affiliates, any of which manufactures or assembles motor vehicles or motor vehicle equipment in the United States.

(5) OWNER.—The term “owner” means an owner inside or outside the United States.

(6) PURCHASER.—The term “purchaser” means a purchaser inside or outside the United States.

(7) PERSON.—The term “person” means any manufacturer, distributor, or dealer and any other person within the United States that may have information related to this chapter.

(b) AUTHORITY TO INSPECT AND INVESTIGATE.—

(1) The Secretary of Transportation may conduct an inspection or investigation—

(A) that may be necessary to enforce this chapter or a regulation prescribed or order issued under this chapter; or

(B) related to a motor vehicle accident and designed to carry out this chapter.

(2) The Secretary of Transportation shall cooperate with State and local officials to the greatest extent possible in an inspection or investigation under paragraph (1)(B) of this subsection.

(c) MATTERS THAT CAN BE INSPECTED AND IMPOUNDMENT.—In carrying out this chapter, an officer or employee designated by the Secretary of Transportation—

(1) at reasonable times, may inspect and copy any record related to this chapter;

(2) on request, may inspect records of a manufacturer, distributor, or dealer to decide whether the manufacturer, distributor, or dealer has complied or is complying with this chapter or a regulation prescribed or order issued under this chapter; and

(3) at reasonable times, in a reasonable way, and on display of proper credentials and written notice to an owner, operator, or agent in charge, may—

(A) enter and inspect with reasonable promptness premises in which a motor vehicle or motor vehicle equipment is manufactured, held for introduction in interstate commerce, or held for sale after introduction in interstate commerce;

(B) enter and inspect with reasonable promptness premises at which a vehicle or equipment involved in a motor vehicle accident is located;

(C) inspect with reasonable promptness that vehicle or equipment; and

(D) impound for not more than 72 hours a vehicle or equipment involved in a motor vehicle accident.

(d) REASONABLE COMPENSATION.—When a motor vehicle (except a vehicle subject to subchapter I of chapter 135 of this title) or motor vehicle equipment is inspected or temporarily impounded under subsection (c)(3) of this section, the Secretary of Transportation shall pay reasonable compensation to the owner of the vehicle if the inspection or impoundment results in denial of use, or reduction in value, of the vehicle.

[(e) RECORDS AND MAKING REPORTS.—The Secretary of Transportation reasonably may require a manufacturer of a motor vehicle or motor vehicle equipment to keep records, and a manufacturer, distributor, or dealer to make reports, to enable the Secretary to decide whether the manufacturer, distributor, or dealer has complied or is complying with this chapter or a regulation prescribed or order issued under this chapter. This subsection does not impose a recordkeeping requirement on a distributor or dealer in addition to those imposed under subsection (f) of this section and section 30117(b) of this title or a regulation prescribed or order issued under subsection (f) or section 30117(b).]

(e) RECORDS AND REPORTS.—The Secretary of Transportation is authorized to require a manufacturer of a motor vehicle or motor vehicle equipment to keep records, and a manufacturer, distributor, or dealer to make reports, to enable the Secretary to decide whether the manufacturer, distributor, or dealer has complied or is complying with this chapter or a regulation prescribed or order issued under this chapter. This subsection does not impose a recordkeeping requirement on a distributor or dealer in addition to those imposed under subsection (f) of this section and section 30117(b) or a regulation prescribed or order issued under subsection (f) or section 30117(b).

(f) PROVIDING COPIES OF COMMUNICATIONS ABOUT DEFECTS AND NONCOMPLIANCE.—A manufacturer shall give the Secretary of Transportation a true or representative copy of each communication to the manufacturer's dealers or to owners or purchasers of a motor vehicle or replacement equipment produced by the manufacturer about a defect or noncompliance with a motor vehicle safety standard prescribed under this chapter in a vehicle or equipment that is sold or serviced.

(g) ADMINISTRATIVE AUTHORITY ON REPORTS, ANSWERS, AND HEARINGS.—

(1) In carrying out this chapter, the Secretary of Transportation may—

(A) require, by general or special order, any person to file reports or answers to specific questions, including reports or answers under oath; and

(B) conduct hearings, administer oaths, take testimony, and require (by subpoena or otherwise) the appearance and testimony of witnesses and the production of records the Secretary considers advisable.

(2) A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(h) CIVIL ACTIONS TO ENFORCE AND VENUE.—A civil action to enforce a subpoena or order under subsection (g) of this section may be brought in the United States district court for any judicial district in which the proceeding is conducted. The court may punish

a failure to obey an order of the court to comply with a subpoena or order as a contempt of court.

(i) **GOVERNMENTAL COOPERATION.**—The Secretary of Transportation may request a department, agency, or instrumentality of the United States Government to provide records the Secretary considers necessary to carry out this chapter. The head of the department, agency, or instrumentality shall provide the record on request, may detail personnel on a reimbursable basis, and otherwise shall cooperate with the Secretary. This subsection does not affect a law limiting the authority of a department, agency, or instrumentality to provide information to another department, agency, or instrumentality.

(j) **COOPERATION OF SECRETARY.**—The Secretary of Transportation may advise, assist, and cooperate with departments, agencies, and instrumentalities of the Government, States, and other public and private agencies in developing a method for inspecting and testing to determine compliance with a motor vehicle safety standard.

(k) **PROVIDING INFORMATION.**—The Secretary of Transportation shall provide the Attorney General and, when appropriate, the Secretary of the Treasury, information obtained that indicates a violation of this chapter or a regulation prescribed or order issued under this chapter.

* * * * *

§ 30170. Criminal penalties

(a) **ACTS PROHIBITED.**—*It is unlawful for a director, officer, or agent of a manufacturer that introduces a motor vehicle or motor vehicle equipment into interstate commerce to authorize, order, or ratify the introduction if the director, officer, or agent knew that—*

(1) at the time of introduction the manufacturer was in violation of section of section 30112(a) or 30118(c) with respect to that motor vehicle or motor vehicle equipment;

(2) the condition of the motor vehicle or motor vehicle equipment that is the subject of that violation created a serious danger of death or grievous bodily harm; and

(3) the condition described in paragraph (2) caused death or grievous bodily harm.

(b) **PENALTIES.**—*Violation of subsection (a) is punishable by—*

(1) a fine of not more than \$10,000, imprisonment for not more than 5 years, or both, if the violation resulted in grievous bodily harm; and

(2) a fine of not more than \$50,000, imprisonment for not more than 15 years, or both, if the violation resulted in death.

(c) **COORDINATION WITH DOJ.**—*Before authorizing a United States Attorney to bring an action, or initiate grand jury proceedings, for a violation of subsection (a) or (b), the Attorney General shall consult with the Secretary of Transportation.*

TITLE 49. TRANSPORTATION

SUBTITLE VI. MOTOR VEHICLE AND DRIVER PROGRAMS

PART C. INFORMATION, STANDARDS, AND REQUIREMENTS

CHAPTER 327

§ 32709. Penalties and enforcement

(a) CIVIL PENALTY.—

(1) A person that violates this chapter or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of not more than ~~[\$2,000]~~ \$5,000 for each violation.—A separate violation occurs for each motor vehicle or device involved in the violation. The maximum penalty under this subsection for a related series of violations is ~~[\$100,000.]~~ \$1,000,000.

(2) The Secretary of Transportation shall impose a civil penalty under this subsection. The Attorney General shall bring a civil action to collect the penalty. Before referring a penalty claim to the Attorney General, the Secretary may compromise the amount of the penalty. Before compromising the amount of the penalty, the Secretary shall give the person charged with a violation an opportunity to establish that the violation did not occur.

(3) In determining the amount of a civil penalty under this subsection, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(C) other matters that justice requires.

(b) CRIMINAL PENALTY.—A person that knowingly and willfully violates this chapter or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 3 years, or both. If the person is a corporation, the penalties of this subsection also apply to a director, officer, or individual agent of a corporation who knowingly and willfully authorizes, orders, or performs an act in violation of this chapter or a regulation prescribed or order issued under this chapter without regard to penalties imposed on the corporation.

(c) CIVIL ACTIONS BY ATTORNEY GENERAL.—The Attorney General may bring a civil action to enjoin a violation of this chapter or a regulation prescribed or order issued under this chapter. The action may be brought in the United States district court for the judicial district in which the violation occurred or the defendant is found, resides, or does business. Process in the action may be served in any other judicial district in which the defendant resides or is found. A subpoena for a witness in the action may be served in any judicial district.

(d) CIVIL ACTIONS BY STATES.—

(1) When a person violates this chapter or a regulation prescribed or order issued under this chapter, the chief law enforcement officer of the State in which the violation occurs may bring a civil action—

(A) to enjoin the violation; or

(B) to recover amounts for which the person is liable under section 32710 of this title for each person on whose behalf the action is brought.

(2) An action under this subsection may be brought in an appropriate United States district court or in a State court of competent jurisdiction. The action must be brought not later than 2 years after the claim accrues.

§ 32710. Civil actions by private persons

(a) VIOLATION AND AMOUNT OF DAMAGES.—A person that violates this chapter or a regulation prescribed or order issued under this chapter, with intent to defraud, is liable for 3 times the actual damages or ~~[\$1,500,]~~ \$10,000, whichever is greater.

(b) CIVIL ACTIONS.—A person may bring a civil action to enforce a claim under this section in an appropriate United States district court or in another court of competent jurisdiction. The action must be brought not later than 2 years after the claim accrues. The court shall award costs and a reasonable attorney's fee to the person when a judgment is entered for that person.

